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HOUSE BILL 2325

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State of Washington

54th Legislature

1996 Regular Session

By Representatives Clements and Brumsickle; by request of Board of Education

Read first time 01/09/96. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to retainage requirements for public bodies; and  
2 amending RCW 60.28.011.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 60.28.011 and 1994 c 101 s 1 are each amended to read  
5 as follows:

6 (1) Public improvement contracts shall provide, and public bodies  
7 shall reserve, a contract retainage not to exceed five percent of the  
8 moneys earned by the contractor as a trust fund for the protection and  
9 payment of: (a) The claims of any person arising under the contract;  
10 and (b) the state with respect to taxes imposed pursuant to Title 82  
11 RCW which may be due from such contractor.

12 (2) Every person performing labor or furnishing supplies toward the  
13 completion of a public improvement contract shall have a lien upon  
14 moneys reserved by a public body under the provisions of a public  
15 improvement contract. However, the notice of the lien of the claimant  
16 shall be given within forty-five days of completion of the contract  
17 work, and in the manner provided in RCW 39.08.030.

1 (3) The contractor at any time may request the contract retainage  
2 be reduced to one hundred percent of the value of the work remaining on  
3 the project.

4 (a) After completion of all contract work other than landscaping,  
5 the contractor may request that the public body release and pay in full  
6 the amounts retained during the performance of the contract, and sixty  
7 days thereafter the public body must release and pay in full the  
8 amounts retained (other than continuing retention of five percent of  
9 the moneys earned for landscaping) subject to the provisions of  
10 chapters 39.12 and 60.28 RCW.

11 (b) Sixty days after completion of all contract work the public  
12 body must release and pay in full the amounts retained during the  
13 performance of the contract subject to the provisions of chapters 39.12  
14 and 60.28 RCW.

15 (4) The moneys reserved by a public body under the provisions of a  
16 public improvement contract, at the option of the contractor, shall be:

17 (a) Retained in a fund by the public body;

18 (b) Deposited by the public body in an interest bearing account in  
19 a bank, mutual savings bank, or savings and loan association. Interest  
20 on moneys reserved by a public body under the provision of a public  
21 improvement contract shall be paid to the contractor;

22 (c) Placed in escrow with a bank or trust company by the public  
23 body. When the moneys reserved are placed in escrow, the public body  
24 shall issue a check representing the sum of the moneys reserved payable  
25 to the bank or trust company and the contractor jointly. This check  
26 shall be converted into bonds and securities chosen by the contractor  
27 and approved by the public body and the bonds and securities shall be  
28 held in escrow. Interest on the bonds and securities shall be paid to  
29 the contractor as the interest accrues.

30 (5) The contractor or subcontractor may withhold payment of not  
31 more than five percent from the moneys earned by any subcontractor or  
32 sub-subcontractor or supplier contracted with by the contractor to  
33 provide labor, materials, or equipment to the public project. Whenever  
34 the contractor or subcontractor reserves funds earned by a  
35 subcontractor or sub-subcontractor or supplier, the contractor or  
36 subcontractor shall pay interest to the subcontractor or sub-  
37 subcontractor or supplier at a rate equal to that received by the  
38 contractor or subcontractor from reserved funds.

1       (6) With the consent of the public body, a contractor may submit a  
2 bond for all or any portion of the contract retainage in a form  
3 acceptable to the public body and from a bonding company meeting  
4 standards established by the public body. (~~The public body shall~~  
5 ~~accept a bond meeting these requirements unless the public body can~~  
6 ~~demonstrate good cause for refusing to accept it.~~) This bond and any  
7 proceeds therefrom are subject to all claims and liens and in the same  
8 manner and priority as set forth for retained percentages in this  
9 chapter. The public body shall release the bonded portion of the  
10 retained funds to the contractor within thirty days of accepting the  
11 bond from the contractor. Whenever a public body accepts a bond in  
12 lieu of retained funds from a contractor, the contractor shall accept  
13 like bonds from any subcontractors or suppliers from which the  
14 contractor has retained funds. The contractor shall then release the  
15 funds retained from the subcontractor or supplier to the subcontractor  
16 or supplier within thirty days of accepting the bond from the  
17 subcontractor or supplier.

18       (7) If the public body administering a contract, after a  
19 substantial portion of the work has been completed, finds that an  
20 unreasonable delay will occur in the completion of the remaining  
21 portion of the contract for any reason not the result of a breach  
22 thereof, it may, if the contractor agrees, delete from the contract the  
23 remaining work and accept as final the improvement at the stage of  
24 completion then attained and make payment in proportion to the amount  
25 of the work accomplished and in this case any amounts retained and  
26 accumulated under this section shall be held for a period of sixty days  
27 following the completion. In the event that the work is terminated  
28 before final completion as provided in this section, the public body  
29 may thereafter enter into a new contract with the same contractor to  
30 perform the remaining work or improvement for an amount equal to or  
31 less than the cost of the remaining work as was provided for in the  
32 original contract without advertisement or bid. The provisions of this  
33 chapter are exclusive and shall supersede all provisions and  
34 regulations in conflict herewith.

35       (8) Whenever the department of transportation has contracted for  
36 the construction of two or more ferry vessels, sixty days after  
37 completion of all contract work on each ferry vessel, the department  
38 must release and pay in full the amounts retained in connection with  
39 the construction of the vessel subject to the provisions of RCW

1 60.28.020 and chapter 39.12 RCW. However, the department of  
2 transportation may at its discretion condition the release of funds  
3 retained in connection with the completed ferry upon the contractor  
4 delivering a good and sufficient bond with two or more sureties, or  
5 with a surety company, in the amount of the retained funds to be  
6 released to the contractor, conditioned that no taxes shall be  
7 certified or claims filed for work on the ferry after a period of sixty  
8 days following completion of the ferry; and if taxes are certified or  
9 claims filed, recovery may be had on the bond by the department of  
10 revenue and the materialmen and laborers filing claims.

11 (9) Except as provided in subsection (1) of this section,  
12 reservation by a public body for any purpose from the moneys earned by  
13 a contractor by fulfilling its responsibilities under public  
14 improvement contracts is prohibited.

15 (10) Contracts on projects funded in whole or in part by farmers  
16 home administration and subject to farmers home administration  
17 regulations are not subject to subsections (1) through (9) of this  
18 section.

19 (11) Unless the context clearly requires otherwise, the definitions  
20 in this subsection apply throughout this section.

21 (a) "Contract retainage" means an amount reserved by a public body  
22 from the moneys earned by a person under a public improvement contract.

23 (b) "Person" means a person or persons, mechanic, subcontractor, or  
24 materialperson who performs labor or provides materials for a public  
25 improvement contract, and any other person who supplies the person with  
26 provisions or supplies for the carrying on of a public improvement  
27 contract.

28 (c) "Public body" means the state, or a county, city, town,  
29 district, board, or other public body.

30 (d) "Public improvement contract" means a contract for public  
31 improvements or work, other than for professional services.

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